



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Brian G. Svoboda, Esq.
Courtney Weisman, Esq.
Perkins Coie LLP
700 13th Street, NW, Suite 600
Washington, DC 20005-3960

MAR 20 2018

RE: MUR 7131
Carol Shea-Porter
Carol Shea-Porter for Congress
and Mary DiModika-Kulju in
her official capacity as
treasurer

Dear Mr. Svoboda and Ms. Weisman:

On September 1, 2016, the Federal Election Commission notified your clients, Representative Carol Shea-Porter and Carol Shea-Porter for Congress and Mary DiModika-Kulju in her official capacity as treasurer ("Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On October 20, 2016, the Commission notified your clients of a supplemental complaint in this matter. Copies of the complaint and supplemental complaint were provided to your clients at that time. On March 6, 2018, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe that Carol Shea-Porter violated 52 U.S.C. § 30116(f). The Commission also found that there is no reason to believe that the Committee violated 52 U.S.C. §§ 30104(b), 30116(f) or 30118(a). Accordingly, the Commission closed its file in this matter.

Documents related to this case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters. 81 Fed. Reg. 50,702 (August 2, 2016). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

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If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark Allen". The signature is fluid and cursive, with the first name "Mark" and last name "Allen" clearly distinguishable.

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Carol Shea-Porter and Carol Shea-Porter for Congress
and Mary DiModika-Kulju in her official capacity
as treasurer

MUR 7131

I. INTRODUCTION

The Complainant alleges that Representative Carol Shea-Porter and Carol Shea-Porter for Congress ("Committee") coordinated with Susan D. Mayer, a Shea-Porter congressional staffer, and Senior Votes Count ("SVC"), a non-connected committee, regarding a \$3,110 contribution that Mayer made to SVC, which was purportedly used to make undisclosed independent expenditures supporting Shea-Porter shortly before the 2014 general election. The Complainant also alleges that the National Committee to Preserve Social Security and Medicare PAC coordinated its actions with SVC to support Shea-Porter. Finally, a supplement to the Complaint alleges that NGP VAN, Inc., credited services to the Committee, resulting in in-kind contributions.

The Committee denies the coordination allegations, which are not supported by the available information. The Commission also finds that there is no reason to believe that the Committee accepted an excessive contribution and failed to report it. Further, the Commission finds that there is no reason to believe that the Committee accepted prohibited contributions.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Shea-Porter was a candidate for reelection in the First Congressional District of New Hampshire in 2014,¹ and Carol Shea-Porter for Congress is her principal campaign committee. During the 2014 election cycle, Susan Mayer was a part-time staffer in Shea-Porter's congressional district office in New Hampshire and volunteered part-time on her re-election campaign.² SVC is a non-connected committee that disclosed the receipt of a \$3,110 contribution from Mayer on October 29, 2014, which was transmitted to SVC through ActBlue.³ SVC disclosed Mayer's occupation and employer as "Not-Employed" and "N/A," respectively.⁴ ActBlue, however, disclosed Mayer's occupation and employer as "Congressional Staffer" and "U.S. House of Representatives," respectively.⁵ Also on October 29, 2014, SVC paid \$3,000 for two radio advertisements on behalf of Shea-Porter, according to an untimely 24-Hour Report of independent expenditures SVC filed on December 2, 2014.

¹ Representative Shea-Porter lost her reelection bid on November 4, 2014. She ran again in 2016 for the same Congressional seat and was elected on November 8, 2016.

² See <http://congressional-staff.insidegov.com>.

³ SVC 2014 Post-General Election Report at 6 (Dec. 4, 2014). ActBlue is a non-connected committee that acts as an intermediary for individual contributions made on its website to Democratic candidates and to political committees. ActBlue Resp. at 1.

⁴ SVC 2014 Post-General Election Report at 6.

⁵ ActBlue 2014 Post-General Election Report at 329,743 (Dec. 4, 2014).

B. Legal Analysis

1. Coordination

Under the Federal Election Campaign Act of 1971, as amended (the "Act"), an expenditure made by any person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, his or her authorized political committees, or their agents, is considered a contribution to such candidate.⁶ Communications that are paid for by a third party, but coordinated with a candidate, are also in-kind contributions to the candidate.⁷ Under Commission regulations, a communication is coordinated if it: (1) is paid for by a third party; (2) satisfies one of five content standards set forth at 11 C.F.R. § 109.21(c);⁸ and (3) satisfies one of six conduct standards set forth at 11 C.F.R. § 109.21(d).⁹

Complainant alleges that Shea-Porter and the Committee coordinated with Mayer and SVC regarding Mayer's contribution that she earmarked for the Committee, resulting in an excessive contribution to the Committee.¹⁰ In support, the Complaint alleges that Mayer and

⁶ 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a). The Act prohibits a candidate or political committee from knowingly accepting contributions in violation of the contribution limits set forth in the Act. 52 U.S.C. § 30116(f).

⁷ 11 C.F.R. § 109.20.

⁸ The content standards are a communication that is an electioneering communication; a public communication that disseminates, distributes, or republishes, in whole or in part, campaign material prepared by a candidate or the candidate's authorized committee; a public communication that expressly advocates the election or defeat of a clearly identified candidate for Federal office; a public communication referring to various types of federal candidates or to political parties that satisfies the requirements of 11 C.F.R. §§ 109.21(c)(4)(i), (ii), (iii) or (iv); and a public communication that is the functional equivalent of express advocacy. *See* 11 C.F.R. § 109.21(c).

⁹ The conduct standards listed in 11 C.F.R. § 109.21(d) are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee; and (6) republication.

¹⁰ Compl at 1.

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SVC representatives appeared at a Shea-Porter campaign event, and that there are professional relationships among SVC representatives, Mayer, and Shea-Porter.¹¹

The Committee and Shea-Porter assert that there is no evidence of coordination with other respondents.¹² They also assert that there is no evidence that Mayer contributed to SVC specifically to fund radio ads on behalf of the Committee.¹³ Even if there had been coordination, they further assert, it would have resulted in a contribution that was only \$400 over SVC's contribution limit.¹⁴ There is information available that Mayer does not appear in a photograph of a Shea-Porter campaign event that the Complainant submitted as proof of coordination.

SVC's payment for the radio ads in support of Shea-Porter satisfies the payment prong, and the communication's nature satisfies the content prong.¹⁵ As to the conduct prong, the Complaint relies on the alleged professional relationships among the various respondents, and the attendance by Mayer and representatives of other respondents at a Shea-Porter campaign event. This information, standing alone, does not satisfy any of the conduct standards set forth in 11 C.F.R. § 109.21(d).¹⁶

Accordingly, the Commission found that there is no reason to believe that Shea-Porter and the Committee violated 52 U.S.C. § 30116(f) by accepting an excessive contribution from SVC or

¹¹ *Id.* at 8, 10.

¹² Shea-Porter and Committee Resp. at 2.

¹³ *Id.*

¹⁴ *Id.* at 3. For the 2014 election cycle, no person was permitted to make contributions to a candidate for federal office or his authorized political committee which in the aggregate exceed \$2,600 for each election. 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b).

¹⁵ See 11 C.F.R. § 109.21(a)(1). The content prong is satisfied because the radio ads are public communications that clearly identify a federal candidate, Shea-Porter, fewer than 90 days before the candidate's election. See 11 C.F.R. § 109.21(c)(4)(i).

¹⁶ 11 C.F.R. § 109.21(d).

Susan Mayer. Further, the Commission found that there is no reason to believe that the Committee violated 52 U.S.C. § 30104(b) by failing to report an excessive contribution from SVC or from Mayer.

2. Other Alleged In-Kind Contributions

The Act defines “contribution” to include “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”¹⁷ “Anything of value” includes all in-kind contributions and, unless otherwise exempted, the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.¹⁸

The Act and Commission regulations prohibit corporations from making contributions to a federal political committee (other than independent-expenditure-only political committees),¹⁹ and a political committee is prohibited from knowingly accepting or receiving such contributions.²⁰

The Complainant alleges that the National Committee to Preserve Social Security and Medicare PAC (“NCP-PAC”) coordinated its actions with SVC to support Shea-Porter by announcing its support for Shea-Porter on the same day that SVC made independent expenditures on behalf of Shea-Porter, and that NCP-PAC made a contribution to Shea-Porter’s campaign because two of SVC’s founders previously worked at NCP-PAC.²¹ NCP-PAC asserts

¹⁷ 52 U.S.C. § 30101(8)(A)(i).

¹⁸ 11 C.F.R. § 100.52(d)(1).

¹⁹ See, e.g., Advisory Op. 2010-11 (*Commonsense Ten*) (citing *Citizens United v. FEC*, 558 U.S. 310, 359 (2010)); *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011).

²⁰ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

²¹ Compl. at 25.

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that its only contribution to Shea-Porter during the 2014 election cycle was on September 26, 2013, more than a year before the alleged coordination, and six months before SVC's establishment.²² NCP-PAC also asserts that SVC's founders worked at NCP-PAC in 2012 and 2013, which was also well before SVC's establishment and the alleged coordination.²³ The alleged relationships, without more, do not indicate any in-kind contribution by NCP-PAC to SVC or to Shea-Porter. Therefore, the Commission finds no reason to believe that the Committee violated 52 U.S.C. § 30116(f) by receiving an excessive contribution from NCP-PAC.

Complainant also alleges that NGP VAN, a software vendor that provided services to the Committee, did not collect payments from it, specifically, that it provided "'credits' to outstanding debt on the [Committee's] filings."²⁴ The Supplemental Complaint, however, provides no information or description of such credits. During the 2014 election cycle, the Committee reported payments to NGP VAN for software services, but there is no information regarding credits NGP VAN extended to the Committee. The available information does not indicate any record of any debt the Committee owes to NGP VAN and the Committee has disclosed none. Thus, the Committee does not appear to have accepted any in-kind contributions from NGP VAN. Therefore, the Commission finds no reason to believe that the Committee violated 52 U.S.C. § 30118 by accepting a prohibited contribution from NGP VAN, Inc.

²² NCP-PAC Resp. at 1. *See also* NCP-PAC's 2013 October Monthly Report at 17 (Oct. 7, 2013).

²³ NCP-PAC Resp. at 2.

²⁴ Suppl. Compl. at 1. The Supplemental Complaint states that the issue of NGP VAN "was not thoroughly addressed" in the Complaint, and alleges that NGP VAN made in-kind contributions to the Committee by forgiving certain debts. *Id.*